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Letter Ruling 08-11: Taxpayer Domiciled in New York, Resident in Massachusetts

July 7, 2008

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You have requested a letter ruling on behalf of your clients, ***** [the Taxpayer] and his wife *****. The husband and wife are lifelong residents of New York who own homes on Long Island and Manhattan. ***** has recently taken a position in Boston that will require his commuting between New York and a rented apartment here, as a result of which he will likely be in Massachusetts for more than 183 days during the taxable year. Despite this, you believe that the Taxpayer should be considered a non-resident of Massachusetts and allowed to file as such, based on the following facts.

FACTS:

You state that the Taxpayer has no intention of making a permanent move to Massachusetts. The wife lives in the New York residence throughout the week, and ***** travels to New York to be with his family on weekends and days off. The Taxpayer will not sell either of his New York residences, nor does he intend to buy a residence in the Commonwealth. The duration of his stay is “uncertain” but “will not exceed a few years,” and wages earned in Massachusetts are currently subject to Massachusetts withholding. The Taxpayer intends to file a non-resident return for tax year 2008.

DISCUSSION:

1. Residency.

You have asked first that we rule that ***** is not a resident of the Commonwealth for purposes of Massachusetts income taxation. We cannot do this. The Department of Revenue is an administrative agency charged with carrying out the tax laws of the Commonwealth. See G.L. c. 62C, § 3. In doing so, the Department may issue rulings, but only such as are “not inconsistent with law.” *Id.* Under G.L. c. 62, § 1(f), a resident of the Commonwealth is defined as:

- (1) any natural person domiciled in the commonwealth, or (2) any natural person who is not domiciled in the commonwealth but who maintains a permanent place of abode in the commonwealth and spends in the aggregate more than one hundred eighty-three days of the taxable year in the commonwealth, including days spent partially in and partially out of the

commonwealth. For purposes of clause (2), a day spent in the commonwealth while on active duty in the armed forces of the United States shall not be counted as a day in the commonwealth. The word "non-resident" shall mean any natural person who is not a resident or inhabitant.

Id.

There is no question that ***** will exceed the length of stay required to be considered a resident. The only question remaining, then, is whether he will have a "permanent place of abode" within the meaning of the statute.

Under TIR 95-7, the Department of Revenue interprets a "permanent place of abode" to mean a dwelling place continually maintained by a person, whether or not owned by such person. A permanent place of abode generally will not include the following:

- during the term of a lease, a dwelling place owned by an individual who leases it to others, not related to the owner or his or her spouse by blood or marriage, for a period of at least one year, where the individual has no right to occupy any portion of the premises and who does not use such premises as his or her mailing address during the term of the lease;
- a camp, military barracks, dormitory room, hospital room or room in any other similar temporary institutional setting;
- a hotel or motel room, but a determination will be made based on the facts and circumstances of each individual's situation;
- a dwelling place completely lacking both kitchen and bathing facilities, or a dwelling place that is not winterized;
- a dwelling place that is maintained only during a temporary stay in Massachusetts for the accomplishment of a particular documented purpose.

TIR 95-7 at C(1).

***** will not be considered to have a permanent place of abode in the Commonwealth if his stay here is "temporary," and his stay is temporary in that he intends to return to New York when his assignment in Massachusetts ends. Under the TIR, however, a stay is considered temporary only if it is "a predetermined length of time *not to exceed one year.*" *Id.* (emphasis supplied). ***** does not meet this test. Although the exact length of his stay is uncertain, the request states that his assignment will last "a few years." Any apartment he rents will thus be a "permanent place of abode" for purposes of determining residency.^[1]

2. Taxation of Massachusetts Residents.

As ***** will be in the Commonwealth more than 183 days and will have a permanent place of abode, he will, by law, be classified a resident of the Commonwealth. The question, then, is: what tax consequences follow from that classification?

The computation of the taxable income of a resident of the Commonwealth begins with federal gross income. Massachusetts gross income generally consists of federal gross income with certain items being added, and others subtracted.^[2] Massachusetts gross income is then divided into Parts A, B, and C gross income, which are further modified in arriving at Parts A, B, and C adjusted gross incomes. Each of these is modified once again by certain deductions and exemptions. See G.L. c. 62, § 3. The figures so arrived at constitute Part A, B, and C taxable income, to which the applicable tax rate for each class, determined under G.L.c. 62, § 4, is then applied.

As this statutory scheme makes clear, a resident of the Commonwealth owes taxes to the Commonwealth on his worldwide income. The law makes no specific provision for any exemptions from taxation of income the resident may have earned outside the Commonwealth, whether from wages or investment. Because ***** is a domiciliary of New York and, at the same time, by

statute, a resident here, this raises the possibility of disputes between New York and Massachusetts concerning the right of a particular state to tax his income, or to actual multiple taxation of the same income.

3. Avoidance of Multiple Taxation.

Multiple taxation of identical income creates the appearance of unfairness and may foster increased non-compliance with applicable tax statutes. In order to avoid such taxation, Massachusetts law allows a credit against taxes paid another jurisdiction as follows:

A credit shall be allowed against taxes imposed by this chapter to a resident for taxes due any other state, territory or possession of the United States, or the Dominion of Canada or any of its provinces on account of any item of Massachusetts gross income subject to the following restrictions and limitations: (i) the amount of such taxes due on such income shall exclude interest and penalties; (ii) the amount of such taxes due shall be reduced by any federal credit therefor allowable on the resident's federal income tax return; and (iii) the amount of the credit allowable shall be the lesser of such taxes as reduced by (i) and (ii), or the amount of tax imposed by this chapter multiplied by a fraction the numerator of which is such item of Massachusetts Part A, Part B or Part C income and the denominator of which is the total Massachusetts Part A, Part B or Part C income, as the case may be. . . .

G.L. c. 62, § 6(a):

In administering this provision, the Commonwealth generally adheres to a 1996 agreement designed to create a more uniform approach to taxation among several states. This agreement established principles to be followed in determining which jurisdiction has the right to tax income covered by the agreement and provides, in general, that (1) income is to be taxed where it is sourced; (2) income that is untaxed by the sourcing state, or that is unsourced," *i.e.*, investment income, may be taxed by the state of domicile *or* the state of statutory residence, with the state of domicile preferred. This means, with respect to unsourced income, that if the state of domicile taxes this income, the state of statutory residence should give the taxpayer a credit for taxes paid to the state of domicile.

As already noted, the Taxpayer will be working in the Commonwealth for a period of years. All the income he earns while he is resident is taxable here, and should be reported on the Massachusetts Form 1, Resident Income Tax Return, at the time provided for filing. As a domiciliary of New York, the Taxpayer will also undoubtedly owe taxes to New York on his entire income. Based on the foregoing discussion, however, Massachusetts will give the Taxpayer a credit for any taxes he pays to New York on income that is either (1) sourced to New York (2) or considered unsourced and therefore taxable, as a preference, in New York, the state of domicile. Massachusetts will not allow a credit for any tax (if any there be) paid to New York on income, *e.g.*, wages, sourced to the Commonwealth.[\[3\]](#)

Very truly yours,

/s/Navjeet K. Bal

Navjeet K. Bal
Commissioner of Revenue

NKB:MTF:jlr

LR 08-11

- [1] Should ***** circumstances change such that he spends one year or less on temporary assignment in the Commonwealth, the conclusions of this Letter Ruling may need revision.
- [2] For specific additions and subtractions, see specific items set forth in G.L. c. 62, § 2.
- [3] The Taxpayers should consult with the taxing authorities in New York to determine New York’s treatment of taxes that may be potentially owed both that State and Massachusetts.